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BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY

In the Matter of the Appeal of:	)	Appeal No. 16-106159 VE
	)	Case No. 2014108800
Patrick Townsend, Kathryn Townsend, and	)	
Anneke Jensen	)	APPLICANT’S CLOSING BRIEF
	)	
of the May 3, 2016 Mitigated Determination of	)	
Non-Significance in the request of ChangMook	)	
Sohn for Substantial Shoreline Development	)	
Permit for an Intertidal Geoduck Aquaculture	)	
Operation	)	

**I. INTRODUCTION AND RELIEF REQUESTED**

Patrick Townsend, Kathryn Townsend, and Anneke Jensen (“Appellants”) failed to meet their burden to prove that Thurston County’s (“County’s”) decision to issue a mitigated determination of nonsignificance (“MDNS”) for Applicant Pacific Northwest Aquaculture, LLC/ChangMook Sohn’s (“Applicant’s”) proposed geoduck farm (“Farm”) was clearly erroneous. Appellants failed to produce any credible evidence demonstrating the Farm has probable and significant impacts with respect to eelgrass, the use of plastics, recreation, or aesthetics – the four issues before the Hearing Examiner in this appeal.

Appellants’ case relied principally on lay witnesses who expressed opposition to and displeasure with the Farm but did not demonstrate that it would result in significant

1 environmental impacts. These witnesses instead raised generalized concerns or speculated  
2 as to potential impacts. The single expert witness offered by Appellants demonstrated  
3 expertise only in economics, and he displayed a remarkable lack of knowledge about  
4 geoduck aquaculture and its potential environmental impacts.

5 Applicant, on the other hand, presented extensive testimony, including four  
6 witnesses who are experts in the fields in which they testified, as well as professionals  
7 with decades of experience managing shellfish farms, demonstrating the Farm will not  
8 have significant environmental impacts. Applicant's witnesses based their testimony on  
9 personal observations, experiences, studies, and reports on geoduck aquaculture generally  
10 and the Farm site specifically. Applicant refuted Appellants' generalized and speculative  
11 concerns, and Appellants presented no credible and effective rebuttal testimony. Thus,  
12 Applicant respectfully requests that the Hearing Examiner affirm the MDNS.

## 13 II. FACTS

14 After obtaining a Ph.D. in economics, Dr. Sohn dedicated his professional career  
15 to public service, working under five governors as executive director of the Washington  
16 State Economic and Revenue Forecast Council. Sohn Testimony. After retiring in 2008,  
17 Dr. Sohn turned his attention to his lifelong dream—growing nutritious food to add to the  
18 world's food supply. *Id.* Dr. Sohn discovered that the tidelands he owns outside of his  
19 residence are highly suitable for growing geoduck—a large, burrowing clam native to  
20 Puget Sound—and on December 18, 2014, he submitted a substantial development permit  
21 application to the County to operate the 1.1-acre Farm. Sohn Testimony; Ex. C-1-M, at 1.

22 On Dr. Sohn's Farm, juvenile geoducks will be planted by hand in nursery tubes  
23 that protrude only a few inches above the substrate. Ex. C-1-M, at 1. The tubes will be  
24 covered with nets that are secured to the substrate to both protect the young geoduck from  
25 predators and prevent loose tubes from being washed off site. *Id.* The tubes and nets will

1 be removed as soon as they are no longer needed—no more than two years after planting.  
2 *Id.* The geoducks will remain in the substrate for several more years until they reach  
3 market size, at which point they will be harvested by hand. *Id.*

4 The County, over the next approximately 18 months, reviewed extensive materials  
5 and site-specific reports pertaining to geoduck aquaculture in general and this Farm  
6 specifically. *Id.*, at 4-5; Ex. C-1-N, at 4-5. The County solicited public comments with  
7 respect to the Farm, and the Applicant provided detailed responses thereto for the  
8 County’s consideration. Ex. C-1-N, p. 5. On May 3, 2016, the County issued a MDNS  
9 for the Farm. Ex. C-1-M, at 1. The MDNS imposes 18 mitigating conditions and finds  
10 that, with these and other conditions required by state and federal agencies, the Farm does  
11 not have probable significant environmental impacts. *Id.*, at 5-6.

12 Appellants filed an appeal of the MDNS on May 24, 2016, alleging the MDNS  
13 does not adequately address seven issues: (A) eelgrass; (B) protection of the environment;  
14 (C) plastic; (D) recreation; (E) aesthetics (F) trespass; and (G) mitigating conditions. Ex.  
15 C-2, at 3-5. On September 2, 2016, and in response to Applicant’s dispositive motion, the  
16 Hearing Examiner entered an order dismissing issues B, F, and G, retaining only issues A,  
17 C, D, and E for hearing. Order Ruling on Applicant’s Motion to Dismiss.

### 18 III. ANALYSIS

#### 19 A. The Examiner Must Accord Substantial Weight to the MDNS and May 20 Overturn It Only If It Was Clearly Erroneous

21 The MDNS is entitled to substantial weight and can only be overturned if it is  
22 found to be clearly erroneous. RCW 43.21C.090; TCC 17.09.160.I.2; *Anderson v. Pierce*  
23 *County*, 86 Wn. App. 290, 302, 936 P.2d 432 (1997), *Moss v. City of Bellingham*, 109  
24 Wn. App. 6, 13, 31 P.3d 703 (2001). Under the clearly erroneous standard, an appellate  
25 body does not substitute its judgment for that of the decision-maker and may overturn a

1 MDNS only when left with the definite and firm conviction that a mistake has been  
2 committed. *Moss*, 109 Wn. App. at 13.

3 **B. Appellants Must Affirmatively Demonstrate the Farm Has Probable,  
4 Significant, and Unmitigated Environmental Impacts**

5 The State Environmental Policy Act (“SEPA”), chapter 43.31C RCW, requires an  
6 environmental impact statement (“EIS”) only for “major actions having a probable  
7 significant, adverse environmental impact.” RCW 43.21C.031(1). An impact is  
8 “probable” only if it is “likely or reasonably likely to occur . . . Probable is used to  
9 distinguish likely impacts from those that merely have a possibility of occurring, but are  
10 remote or speculative.” WAC 197-11-782. An impact is “significant” only if there is “a  
11 reasonable likelihood of more than a moderate adverse impact on environmental quality.”  
12 WAC 197-11-794. Accordingly, to demonstrate the MDNS is clearly erroneous,  
13 Appellants must produce affirmative evidence demonstrating the Farm, as mitigated, has  
14 probable significant adverse environmental impacts. *Boehm v. City of Vancouver*, 111  
15 Wn. App. 711, 719, 47 P.3d 137 (2002) (affirming a MDNS when the appellants  
16 “presented no evidence regarding any probable significant adverse environmental impacts  
17 of the project.”); *Anderson*, 86 Wn. App. at 305 (affirming a MDNS when the appellant  
18 “failed to cite any fact or evidence in the record demonstrating that the [proposed project],  
19 as mitigated by the 54 MDNS conditions, will cause significant adverse environmental  
20 impacts.”); *Moss*, 109 Wn. App. at 23-24 (affirming a MDNS when, “although appellants  
21 complain generally that the impacts were not adequately analyzed, they have failed to cite  
22 any facts or evidence in the record demonstrating that the project as mitigated will cause  
23 significant environmental impacts warranting an EIS.”).

1 In determining whether an EIS is required, the responsible official must consider  
2 measures that may be implemented by the Applicant or required by law or regulation to  
3 mitigate potential environmental impacts. WAC 197-11-330(1)(c). This is an important  
4 consideration in this case, as the Farm is subject to numerous federal, state, and County  
5 regulatory requirements. Cooper Testimony; Ex. S-28. Washington State courts favorably  
6 view use of the MDNS process to mitigate impacts without the need for an EIS.  
7 *Anderson*, 86 Wn. App. at 302; *Moss*, 109 Wn. App. at 21. Appellants cannot meet their  
8 burden by raising generalized, speculative or potential concerns, nor can they rely on  
9 community displeasure. *Anderson*, 86 Wn. App. at 305 (“community displeasure and [the  
10 appellant’s] preference for an EIS are inadequate grounds for overturning” a MDNS).  
11 However, that is precisely what Appellants have attempted to do here. They produced no  
12 evidence that the Farm, as mitigated, has probable and significant adverse environmental  
13 impacts, relying instead on generalized, potential, or speculative impacts. To the limited  
14 extent Appellants identified changes associated with the Farm, they failed to demonstrate  
15 those changes resulted in significant adverse environmental impacts under SEPA.

16 **C. Appellants Produced No Credible or Concrete Evidence that the Farm Will**  
17 **Adversely Impact Eelgrass (Issue A)**

18 Appellants failed to prove the Farm has probable and significant adverse impacts  
19 to eelgrass. In fact, Appellants failed to demonstrate that there is any eelgrass in the area  
20 that the Farm could potentially impact.

21 There is no eelgrass at the Farm site, or even in the vicinity. Bloch Testimony;  
22 Exs. S-32, S-33. Eelgrass was observed outside of the Farm site over a decade ago but  
23 has not been observed since 2008. Bloch Testimony; Ex. S-32. There is an eelgrass test  
24 site located 330 feet away from the Farm site that showed initial promise, but the eelgrass  
25 in that test site completely died off recently. Bloch Testimony. Washington Department

1 of Natural Resources (“DNR”) is monitoring the site and may continue test plantings.  
2 There is, however, currently no certainty that there will be an eelgrass bed at this site in  
3 the future, and there are numerous reasons for believing that this test site will not be  
4 successful. Bloch Testimony. Thus, any claims that the Farm will adversely impact  
5 eelgrass at that test site are necessarily speculative, not probable, and cannot form a basis  
6 for overturning the MDNS. RCW 43.21C.031(1); WAC 197-11-782.

7       Moreover, even if there was a viable eelgrass bed at the location of the test site,  
8 Appellants provided no concrete or credible evidence that the Farm would have any  
9 impact on that eelgrass. The only potential mechanism of impact offered by the  
10 Appellants was sediment transport. David Batker speculated that a “significant” amount  
11 of sediment would be transported to the test site from geoduck farming activities. Mr.  
12 Batker is an economist and does not have an advanced degree in sediment transport or  
13 physical geography. Ex. T-112; Batker Testimony. Mr. Batker has never studied  
14 sediment transport for geoduck aquaculture, was not aware that such studies have been  
15 performed for prior geoduck farm applications and has never witnessed a geoduck harvest  
16 or, to his knowledge, visited a geoduck farm after harvest. Batker Testimony. Mr. Batker  
17 made no attempt to quantify the amount of sediment that would be transported from the  
18 Farm to the eelgrass test site. *Id.* Instead, Mr. Batker relied on sediment transport studies  
19 that have been performed for completely unrelated activities like Louisiana sediment  
20 diversion projects (which are intended to move sediment) and bottom trawling to inform  
21 his opinion on geoduck farming in Puget Sound. Batker Testimony; Osborne Testimony.  
22 Mr. Batker’s claim that the Farm could harm the eelgrass test site is uninformed  
23 speculation and provides no basis for a finding of probable significant impacts.

24       Applicant, on the other hand, provided concrete and credible affirmative evidence  
25 demonstrating the Farm does not have probable significant adverse impacts to eelgrass.

1 Dr. Phil Osborne testified on behalf of Applicant that even under the most conservative  
2 assumptions, the amount of sediment that could be transported from the Farm to the  
3 eelgrass test site is negligible (no more than four millimeters), particularly when compared  
4 with natural events. Osborne Testimony. Dr. Osborne holds a Ph.D. in physical  
5 geography, focuses his professional career on analyzing coastal processes including  
6 geomorphology and sediment transport, has extensively studied potential sediment  
7 transport associated with geoduck aquaculture in Puget Sound, and has been recognized  
8 by the Shorelines Hearings Board in numerous cases as having credible and expert  
9 knowledge on this precise subject. *Coalition to Protect Puget Sound Habitat v. Pierce*  
10 *County*, SHB No. 14-024 (Findings of Fact, Conclusions of Law and Order, May 15,  
11 2015), at Findings of Fact (“FF”) 32-38, Conclusion of Law (“COL”) 19; *Coalition to*  
12 *Protect Puget Sound Habitat v. Thurston County*, SHB No. 13-006c (Findings of Fact,  
13 Conclusions of Law, and Order, Oct. 11, 2013), at FF 30-32, COL 15; *Coalition to*  
14 *Protect Puget Sound Habitat v. Pierce County*, SHB No. 11-019 (Findings of Fact,  
15 Conclusions of Law, and Order, July 13, 2012), at FF 6, 14, 16; Ex. S-4. Dr. Osborne’s  
16 testimony in this case is informed by his extensive education and experience, direct  
17 studies and measurements taken during geoduck farming activities, and specific analysis  
18 and data collection performed at the Farm site. Osborne Testimony; Ex. S-2.

19 Applicant’s eelgrass expert Phil Bloch also testified that, for numerous reasons, the  
20 Farm is not likely to impact the eelgrass test site. The limited amount of sediment  
21 transport associated with the Farm, as calculated by Dr. Osborne, is below natural,  
22 baseline conditions and would not impact the eelgrass test site. Bloch Testimony. In fact,  
23 a recent, peer-reviewed, published study showed intertidal geoduck harvesting does not  
24 significantly impact eelgrass directly adjacent to the harvest area, let alone over 300 feet  
25 away. Osborne Testimony; Bloch Testimony; Ex. S-11 (“Suspended sediments were

1 increased by harvesting, but generally limited to the footprint of the harvested area, and  
2 were not greater than those created by wind/storm conditions.”) Numerous additional  
3 studies confirm potential negative impacts associated with shellfish farming in eelgrass  
4 are limited to the culture plot and directly adjacent areas, and that shellfish beds, including  
5 geoduck farms, can benefit eelgrass. Bloch Testimony; Ex. S-37.

6 Based on this scientific record, a recent programmatic assessment by federal  
7 regulatory agencies of current and potential future shellfish farming activities, including  
8 geoduck aquaculture in South Puget Sound, found that eelgrass beds are adequately  
9 protected by a buffer of 16 feet between new shellfish farms and eelgrass beds. Bloch  
10 Testimony; Exs. S-30, at 33, S-31, at 12. As Mr. Bloch testified, this 16-foot buffer is  
11 considered a conservative safe harbor, and applicants can propose smaller buffers on a  
12 case-specific basis. Bloch Testimony. The distance between the Sohn Farm site and the  
13 eelgrass test is more than twenty times greater than this conservative, 16-foot buffer, and  
14 even DNR indicated it does not have concerns with the Farm impacting the test site. *Id.*

15 Finally, Mr. Batker speculated that if the Farm goes in, it will prevent eelgrass  
16 from establishing at the Farm site, at least while the Farm is operational. Mr. Batker could  
17 not opine on the likelihood of eelgrass establishing at the Farm site if the Farm is not  
18 established, and therefore this concern is by definition speculative and insufficient for  
19 overturning the MDNS. Batker Testimony. Mr. Batker also could provide no specific  
20 support for his opinion and, further demonstrating his lack of knowledge on this issue,  
21 admitted he was not aware of any studies that have been conducted on eelgrass  
22 establishing or continuing at a geoduck culture site. Batker Testimony.

23 As Mr. Bloch testified, this issue has in fact been studied. In one case, a geoduck  
24 aquaculture bed is believed to have facilitated the establishment of eelgrass in an area that  
25 was previously devoid of it, and while there were reductions of eelgrass in the culture site



1 after harvest, the eelgrass bed fully recovered, even during subsequent geoduck culture  
2 cycles. Bloch Testimony; Ex. C-1-N-5. In another study, geoducks were planted and  
3 harvested within an existing eelgrass bed, and there was a reduction in eelgrass in the  
4 culture plot during harvest, but eelgrass subsequently recovered and the culture and  
5 “control” sites were indistinguishable 15 months later. Bloch Testimony; Ex. S-14. Mr.  
6 Bloch also analyzed eelgrass monitoring data collected by DNR and identified eight  
7 monitoring sites adjacent to shellfish farms. Bloch Testimony. None of the eight sites  
8 showed a decrease in eelgrass, and three sites showed increases. *Id.*; Ex. S-52.

9 Because Appellants provided no concrete or credible evidence that the Farm will  
10 adversely impact eelgrass, and Applicant provided extensive evidence contradicting this  
11 claim, Appellants failed to carry their burden of proof with respect to Issue A.

12 **D. Appellants Failed to Demonstrate Adverse Impacts Associated with the Use of**  
13 **Plastics (Issue C)**

14 Appellants’ Notice of Appeal makes two discrete claims in Issue C. The first is  
15 that most plastics leach chemicals that have estrogenic activity, which cause adverse  
16 health effects in mammals. Appellants effectively abandoned this issue at hearing,  
17 offering no specific or detailed evidence to support it. Applicant’s expert witness, Dr.  
18 Rosalind Schoof, testified that none of the Farm’s plastic gear has been tested and found  
19 to leach chemicals that have estrogenic activity. Schoof Testimony. Further, geoduck  
20 gear such as PVC does not contain plasticizers known to have estrogenic activity. *Id.*

21 Appellants’ second claim is that PVC tubes used in geoduck aquaculture will  
22 impact tidal action, sand movement, and currents that can impact other properties in  
23 Zangle Cove. Appellants offered no expert testimony or exhibits to support this claim.  
24 Applicant, on the other hand, provided the expert testimony and analysis of Dr. Osborne.  
25 Dr. Osborne concluded that, consistent with his analyses for other geoduck farms in Puget

1 Sound, the subject Farm's plastic gear would not cause significant impacts to other  
2 properties or the environment. Osborne Testimony; Exs. S-2, at 19, S-4, at 27-34.

3 While not raised in their Notice of Appeal, Appellants alleged at hearing that the  
4 Farm's gear could cause harmful impacts if it were to break down into microplastics.  
5 Appellants provided no concrete or credible evidence, however, to demonstrate that this  
6 would occur. Dr. Schoof testified that she has analyzed this claim on several occasions  
7 and concluded that it is not supported. Schoof Testimony. Monitoring results show that  
8 aquaculture operations are not a significant source of marine microplastics, geoduck gear  
9 is designed and maintained to minimize the potential for degradation, and site-specific  
10 studies of geoduck farms and adjacent sites revealed no presence of microplastics in  
11 sediments. Schoof Testimony; Exs. S-48, S-39, S-51. Geoduck farmers use the same  
12 geoduck gear over multiple cycles without the gear degrading or wearing down, providing  
13 further confirmation that they are not significantly contributing to microplastics. Schoof  
14 Testimony; Phipps Testimony. Finally, the Shorelines Hearings Board has already  
15 considered and rejected this claim in numerous prior cases. SHB No. 14-024, at FF 39-  
16 47; SHB No. 13-006c, at FF 41, COL 16; SHB No. 11-019, at FF 9, 11.

17 Because Appellants provided no evidence that the Farm's plastic gear would cause  
18 probable significant environmental impacts, and Applicant provided concrete and credible  
19 evidence undermining this claim, Appellants failed to meet their burden on Issue C.

20 **E. Appellants Failed to Demonstrate that the Farm Will Significantly Impact**  
21 **Recreation (Issue D)**

22 Appellants discussed recreational uses within Zangle Cove and expressed general  
23 concerns with the Farm potentially impacting recreation. However, they failed to  
24 demonstrate the Farm would result in negative impacts to recreation. For example,  
25 Appellants provided testimony and pictures of recreational activities in Zangle Cove, such

1 as kayaking and tubing, but they presented no evidence that the Farm would restrict these  
2 activities. Similarly, Mr. Batker provided “calculations” of how much area the Farm’s  
3 footprint would occupy, but he failed to show that the Farm would in any way inhibit  
4 recreation, and on cross-examination Mr. Batker admitted his calculations were arbitrary.  
5 Batker Testimony; Exs. 104, 105. Witnesses for Applicant, on the other hand, who have  
6 direct experience with geoduck farms, testified that geoduck farming does not restrict  
7 recreational activities. Cooper Testimony; Phipps Testimony; Roser Testimony.  
8 Members of the public can, and do, continue to kayak, boat, and tube on the water above  
9 active geoduck farms; they simply must follow the same reasonable precautions they  
10 would take when recreating in other areas. Cooper Testimony; Phipps Testimony; Roser  
11 Testimony; Ex. S-26. Furthermore, the Farm is designed and conditioned to protrude only  
12 a few inches above the substrate. Sohn Testimony; Ex. C-1-M. And, contrary to  
13 Appellants’ assertions, no stakes or rebar will protrude above the netting; rebar will be  
14 bent so that both ends are buried in the substrate. Phipps Testimony.

15 Appellants also speculated that farming activities, such as planting and harvesting,  
16 could deter recreational activities. Appellants provided no evidence or explanation in  
17 support of this claim. Brian Phipps testified for Applicant, stating farm activities occur  
18 relatively rarely—less than one hundredth of one percent of the time over the Farm’s six-  
19 year culture cycle. Phipps Testimony. Further, Mr. Phipps testified that in his decades of  
20 experience, he has never witnessed recreationists being precluded or discouraged from  
21 using an area during farming activities. If anything, people are interested in and attracted  
22 to farming activities and like to learn about the process. Phipps Testimony; Cooper  
23 Testimony. Mr. Phipps and Diane Cooper testified that Taylor Shellfish spends  
24 significant resources taking interested members of the public on farm tours and providing  
25 other opportunities to learn about and enjoy the shellfish farms. Phipps Testimony;

1 Cooper Testimony. Mr. Batker even acknowledges shellfish beds benefit recreation by  
2 cleaning the water and preventing beach closures. Batker Testimony; Ex. T-111, at 44.  
3 *See also* Ex. S-50, at 4.

4 Finally, Appellants speculated that if the Farm causes a reduction in wildlife  
5 populations, then recreational opportunities to view wildlife could be diminished.  
6 Appellants provided no evidence that wildlife populations would be reduced, however.  
7 Instead, Mr. Batker inaccurately criticized studies that indicate geoduck farming does not  
8 cause significant impacts, and he testified he was unaware of cumulative impact studies  
9 recently performed for shellfish farming in the State. Batker Testimony; Meaders  
10 Testimony. Numerous witnesses for Applicant with experience and expertise in geoduck  
11 aquaculture testified that the Farm should not cause wildlife reductions. Mr. Phipps and  
12 Ms. Cooper, who have decades of experience overseeing geoduck farms, testified that  
13 farms do not cause a reduction in wildlife, and if anything result in increased wildlife use.  
14 Phipps Testimony; Cooper Testimony. Dr. Louis Roser provided similar testimony,  
15 stating he has seen an increase in wildlife use at his property since a farm was installed.  
16 Roser Testimony. And Applicant's fish and wildlife expert, Marlene Meaders, testified  
17 that recent, rigorous studies indicate that geoduck farming does not cause significant  
18 reductions in wildlife populations. Meaders Testimony; Exs. S-30, S-31.

19 Appellants provided no evidence that the Farm will negatively impact recreation,  
20 but simply expressed general concerns and, at most, community displeasure with the  
21 Farm. These are inappropriate grounds for reversing the MDNS. *Anderson*, 86 Wn. App.  
22 at 305. Applicant provided concrete and credible evidence that the Farm will not  
23 negatively impact recreation. Appellants failed to meet their burden of proof on Issue D.  
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1           **F. Appellants Failed to Demonstrate the Farm Will Cause Significant Aesthetic**  
2           **Impacts (Issue E)**

3           Appellants failed to demonstrate the Farm will have probable significant adverse  
4           aesthetic impacts. The Farm will be limited to the tidal elevations between -4.5 and +3  
5           mean lower low water (“MLLW”), gear will only protrude a few inches from the  
6           substrate, and gear will only be in place for two years out of the six-year cycle. Meaders  
7           Testimony; Exs. C-1-M, S-34. Given these limitations, Ms. Meaders testified that, under  
8           the most conservative assumptions, the entire Farm will be completely submerged for  
9           roughly 94 percent of daylight hours over a six-year culture cycle. Meaders Testimony;  
10          Ex. S-34. Moreover, the tidal elevation drops below -2 MLLW for only six hours during a  
11          given year, so a substantial majority of the Farm will almost never be visible. Meaders  
12          Testimony. Even when limiting the analysis to a single year when gear is present, the  
13          Farm will be completely submerged over 81 percent of the daylight hours. Ex. S-34.

14          Appellants offered no evidence to contradict these facts. Instead, Appellants  
15          suggested that aesthetic impacts could be determined by gauging the community’s  
16          reaction to the Farm—an approach that case law explicitly rejects. *Anderson*, 86 Wn.  
17          App. at 305. Appellants also provided a skewed presentation of the facts. For example,  
18          Mr. Townsend provided data in the summer that shows an average exposure of  
19          approximately 21 percent when the data is summarized by daylight hours. Meaders  
20          Testimony. But, as Ms. Meaders testified, Mr. Townsend reported each exposure as a full  
21          day, regardless of the amount of time gear would be exposed, ballooning the exposure  
22          value by roughly four times. *Id.* Appellants, in their rebuttal case, did not contest that Mr.  
23          Townsend’s presentation was skewed or challenge the accuracy of Ms. Meaders’ analysis.

24          Beyond being fully submerged for the vast majority of daylight hours, the Farm  
25          will incorporate numerous measures to minimize potential aesthetic impacts. The MDNS

1 requires, among other things, compliance with current geoduck farming environmental  
2 codes of practice, routine site inspections and patrols, maintaining gear deployment and  
3 removal records, and the use of gear that blends into the surrounding environment. Ex. C-  
4 1-M. Moreover, all gear must be removed within two years of installation. Ex. C-1-M.  
5 Thus, for four years out of the six-year culture cycle the Farm will be essentially invisible,  
6 with only occasional site visits to check on the health of the geoducks. Phipps Testimony.

7 Appellants also raised concerns with lighting and noise but failed to demonstrate  
8 that the Farm would have significant impacts, particularly given the MDNS contains  
9 mitigating measures to address these concerns. The MDNS prohibits permanent lighting,  
10 states temporary lighting shall be directed to minimize off-site glare to the extent possible,  
11 allows only the use of headlamps during nighttime operations, and states noise impacts  
12 shall be minimized by using fully-enclosed and insulated motors with approved muffled  
13 exhaust systems. Ex. C-1-M. Further, Mr. Phipps testified that Taylor Shellfish goes  
14 above and beyond these requirements by double-insulating their motor boxes. Phipps  
15 Testimony. And, as Dr. Roser testified, in this particular area more noise is caused by  
16 other uses such as boats and personal watercraft. Roser Testimony.

17 Finally, Appellants expressed opposition to the Farm by contending it is a  
18 commercial activity that is inherently inconsistent with the residential character of the  
19 neighborhood. It is undisputed, however, that geoduck aquaculture is allowed under the  
20 County's comprehensive plan, zoning code, and Shoreline Master Program. Ex. C-1-N.  
21 Moreover, Appellants' claim is factually incorrect. There are not only other commercial  
22 activities in the area, such as the Boston Harbor Marina to the west, but there are existing  
23 geoduck farms nearby, such as the farm located on Dr. Roser's property to the east. Roser  
24 Testimony. Shellfish have been commercially farmed in Thurston County for over 100  
25 years, and there are numerous additional farms throughout the area. Cooper Testimony;

1 Phipps Testimony. Even Mr. Townsend admitted there are other geoduck farms in the  
2 area, undermining Appellants' claim that this is a novel use incompatible with the existing  
3 character of the neighborhood. Townsend Testimony.

4 Appellants failed to meet their burden of proof with respect to Issue E. The Farm  
5 is designed and mitigated to minimize aesthetic impacts, will be submerged for roughly 94  
6 percent of daylight hours, and will be essentially invisible for two-thirds of the culture  
7 cycle. Appellants failed to demonstrate that the Farm has probable significant aesthetic  
8 impacts. In fact, if it were deemed to have significant aesthetic impacts under these  
9 conditions, it is difficult to imagine that any use or development—including Appellants'  
10 permanently-visible waterfront homes and other structures—could be insignificant.

#### 11 IV. CONCLUSION

12 Appellants are displeased with the Farm, but this is an inappropriate basis for  
13 reversing the MDNS. The record clearly demonstrates that the County carefully reviewed  
14 the Farm, considered public comments, and imposed appropriate measures in the MDNS  
15 to minimize the Farm's potential impacts. Appellants failed to demonstrate that, as  
16 mitigated, the Farm has probable significant adverse environmental impacts, and  
17 Applicant provided concrete and credible evidence refuting Appellants' claims.  
18 Accordingly, the MDNS should be affirmed.

19 DATED this 20th day of January, 2017.

20  
21 PLAUCHÉ & CARR LLP

22 By: 

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